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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/801,917	03/16/2004	Kim I. McCavit	JENES-04001	3088
28270	7590	03/17/2006	EXAMINER	
O'MALLEY AND FIRESTONE 919 SOUTH HARRISON STREET SUITE 210 FORT WAYNE, IN 46802			SHALLENBERGER, JULIE A	
			ART UNIT	PAPER NUMBER
			2875	

DATE MAILED: 03/17/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/801,917

Applicant(s)

MCCAVIT ET AL.

Examiner

Julie A. Shallenberger

Art Unit

2875

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 16 March 2004.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-14 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-14 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 16 March 2004 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date <u>3/16/04</u> . | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Drawings

The drawings are objected to because item 32 of Figure 3A and 3B was not mentioned in the specification. Furthermore, the label "molten wax" should be deleted from Figure 4. Also, solid black areas (Figures 6 and 7) are not permitted.

Corrected drawing sheets in compliance with 37 CFR 1.121(d) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. The figure or figure number of an amended drawing should not be labeled as "amended." If a drawing figure is to be canceled, the appropriate figure must be removed from the replacement sheet, and where necessary, the remaining figures must be renumbered and appropriate changes made to the brief description of the several views of the drawings for consistency. Additional replacement sheets may be necessary to show the renumbering of the remaining figures. Each drawing sheet submitted after the filing date of an application must be labeled in the top margin as either "Replacement Sheet" or "New Sheet" pursuant to 37 CFR 1.121(d). If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

Specification

The disclosure is objected to because of the following informalities:

Figures 4-7 should be separately described in the "Brief Description of the Drawings".

Paragraph [0018], line 4, and paragraph [0020], line 1, "12" should be changed to --10--.

Paragraph [0021], line 2, "40" should be changed to --14--.

Appropriate correction is required.

Claim Objections

Claim 14 is objected to because of the following informalities:

Claim 14 appears to be incomplete. The examiner is unclear of what is done "after leaving a gap..."

Appropriate correction is required.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

Claims 1, 4, 8, 10 and 12 are rejected under 35 U.S.C. 102(e) as being anticipated by Jensen (US Publication No. 2003/0035291).

In regard to claims 1, 4, and 10, Jensen discloses an imitation candle with a wax shell (col. 2 lines 33-34) having a central cavity (38) with an interior surface

(unnumbered), an insert (36) having a different thermal coefficient of expansion than the wax, positioned in the central cavity (38); and a gap being filled with air (see Figure 3) between the insert (36) providing a source of artificial illumination (24), and the interior wall of the central cavity (38) extending from an entry surface of the shell (12) partway up the central cavity.

In regard to claim 8, Jensen discloses the central cavity and the gap of the imitation candle extending into the shell from a bottom surface of the shell shown in figure 3.

In regard to claim 12, Jensen discloses an imitation candle further having a plurality of edges between surfaces of the shell exhibiting substantial angles of intersection being rounded (see Figure 3).

Claims 13 and 14 are rejected under 35 U.S.C. 102(e) as being anticipated by Wohl (5,597,300).

Wohl discloses a process for making an imitation candle comprising steps for casting a shell of molten wax, forming a central cavity, a second casting of wax within the central cavity, a module inserted in the central cavity (col. 2 line 65—col. 3 line 37) , gap (col. 3 lines 2-3), and a bonding layer (col. 9 lines 16-19).

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

Art Unit: 2875

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 2,3,5-7,9, and 11 are rejected under 35 U.S.C. 103(a) as being unpatentable over Jensen (6,616, 308) in view of Wohl (5,597,300).

In regard to claims 2,3, and 6, Jensen discloses the invention as described above, but lacks the teaching of bonding between layers that retain the insert. Wohl teaches bonding between layers that retain the insert (col. 9 lines 9-19) and a multi-step casting method (col. 3 lines 25-37).

In regard to claim 5, Jensen teaches a gap being filled with air shown in figure 3.

In regard to claim 7, Jensen teaches a central cavity and the gap of the imitation candle extending into the shell from a bottom surface of the shell shown in figure 3.

In regard to claim 9, Jensen teaches the insert being an artificial source of illumination 24.

In regard to claims 11, Jensen teaches a plurality of rounded edges shown in figures 2 and 3.

Conclusion

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

Calzada (6,544,303) teaches a candle with a gap between the shell and the core.

Limburg (6,966,665) teaches a flameless candle.

Andeweg (3,890,085) and (3,761,702) teach illuminated candles.

Freeman (6,491,517) teaches a method of forming a candle.


Frandsen (6,375,455) teaches a reusable candle.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Julie A. Shallenberger whose telephone number is (571)272-7131. The examiner can normally be reached on Monday - Friday 830-5.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Renee Luebke can be reached on 571-272-2009. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Julie Shallenberger
Examiner AU 2875



RENEE LUEBKE
PRIMARY EXAMINER